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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-116

RALPH D. ROCKS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Petitioner, Ralph D. Rocks, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on June 14, 1973.

OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, appears as Appendix A hereto. The opinion of the District Court, which was adopted by the Court of Appeals, was reported as *United States v. Ralph D. Rocks*, 339 F. Supp. 249 (E.D.Va., 1972), and it appears as Appendix B hereto.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on June 14, 1973. This petition for certiorari was filed within thirty days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Should this Court, in the exercise of its supervisory role over the administration of justice in the Federal courts, and in the light of recent amendments to the code of professional ethics, require that defense counsel be afforded the right of cross-examination in post-trial hearings involving juror misconduct.

2. Was Petitioner denied due process of law and effective assistance of counsel when, in a post-trial hearing involving juror misconduct, after it appeared that one or more jurors may have read a prejudicial article in the course of their deliberations, defense counsel was denied the right of cross-examination, the trial judge refused to ask relevant non-cumulative questions, and, on the basis of the fragmentary record, it was held that Petitioner had not sustained his burden of proving that juror misconduct had in fact occurred.

3. Does the decision in the present case, in upholding a conviction under 18 U.S.C. §1952 where the single use of an interstate facility was a mere happenstance and incidental to a course of activity which was essentially local, conflict with the decisions of this Court and of the Seventh Circuit in *Rewis v. United States*, 401 U.S. 808, and *United States v. Altobella*, 442 F.2d 310 (7th Cir., 1971).

4. Is it appropriate, in a Federal criminal prosecution, in which violation of State law is an element of the federal crime, to certify unresolved issues of State law, which may be dispositive of the case, to the highest Court of the State

pursuant to the Uniform Certification of Questions of Law Act.

5. Should the court below have certified unresolved questions of Maryland bribery law, which might have been dispositive of this federal criminal case, and on which authorities from other jurisdictions were in conflict, to the Court of Appeals of Maryland pursuant to the Uniform Certification of Questions of Law Act.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The statutes and constitutional provisions involved in this petition are:

(A) The Federal Anti-Racketeering Act, 18 U.S.C. §1952, which forbids the use of an interstate facility to further "bribery . . . in violation of the laws of the State in which committed . . ."

(B) Article 27, Section 23, of the Annotated Code of Maryland, which forbids bribery of ". . . any officer or any employee . . . of any county . . . for the purpose of influencing him in the performance of his official duties . . ."

(C) The due process clause of the Fifth Amendment to the Constitution of the United States.

(D) The impartial jury and assistance of counsel clauses of the Sixth Amendment to the Constitution of the United States.

(E) Chapter 427 of the Laws of Maryland of 1972, which provides that the Maryland Court of Appeals "may answer questions of law certified to it by . . . a Court of Appeals of the United States . . . when requested by the certifying court if there is involved . . . a question of law of this State which may be determina-

tive of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the Court of Appeals of this State".

These statutes and constitutional provisions are set forth as Appendix C hereto.

STATEMENT OF THE CASE

Petitioner, Ralph D. Rocks, was convicted, after a jury trial, on a single count indictment which charged a violation of the Federal Anti-Racketeering Act, 18 U.S.C. §1952, and, by incorporation, the Maryland bribery statute, Art. 27, §23 of the Annotated Code of Maryland. The indictment alleged that Rocks, a Maryland resident and real estate developer, together with Jesse S. Baggett, a member of the Board of County Commissioners of Prince George's County, Maryland, used an interstate facility to promote the bribery of Baggett.

Rocks and Baggett were tried separately at the Government's election. The Rocks case was transferred to Norfolk, in the Eastern District of Virginia, after the Baggett trial, which took place first in Baltimore, resulted in extensive publicity.

The essence of the alleged offense was that Rocks signed a $3,500 check in Washington, D. C., in December, 1964, made payable to a Maryland tractor firm; that Baggett, three days later, purchased a tractor with the check; that the tractor, although purchased by the Rocks firm and depreciated on its books, was used by Baggett, from time to time, on his farm in Calvert County, Maryland; and that Rocks, by purchasing the tractor and permitting Baggett to use it, sought to influence Baggett's actions on various but unidentified rezoning applications which Rocks had filed in

Prince George's County, Maryland. The alleged violation of 18 U.S.C. §1952 was the movement of the $3,500 check from the District of Columbia to Maryland. The Government did not allege, and there was no evidence tending to show, where, how, by whom or under what circumstances the check was delivered to Baggett.

Rocks was a resident of Montgomery County, Maryland, but his business office was located in the District of Columbia. Although he purchased and developed land in various area of Maryland and Virginia, his principal development activities were in Prince George's County, Maryland, immediately adjacent to the District of Columbia. Baggett was a County Commissioner from 1964 to 1970, and, from December, 1964, to December, 1966, he was Chairman of the Board (Tr. 2038). Rocks and Baggett were shown to have been close personal friends for many years preceding the alleged offense (Tr. 676-83, 1885). They were business associates, with others, in a federal savings and loan association formed in 1962 (Tr. 476-94, 745-51).

The Government contended, and the evidence showed, that the decade of the 1960's was one of great growth in Prince George's County. The Board of County Commissioners, who had final authority in all zoning matters, favored expansion and, in general, they favored rezoning so as to permit development (Tr. 723-29). It was uncontradicted that no one County Commissioner exercised influence over others; that the Chairman of the Board did not vote on rezoning applications except to break a tie; that Baggett did not urge other Commissioners with respect to individual applications; and that the Commissioners did not disqualify themselves from participating in cases involving applications filed by friends (Tr. 942-44, 997, 1054, 1080-81, 1953-55, 1979-84, 2011, 2038-39, 2043, 2204).

On December 23, 1964, when the check for the tractor was issued, Rocks had no zoning applications pending before the County Commissioners. Applications were filed and determined at various times prior and subsequent to that date. The evidence as to them, however, showed that Rocks was not always successful, and that, in fact, a significant percentage of his applications were denied (Tr. 530, 532-36, 2267-68). A zoning expert testified that all of the Rocks matters were decided by the County Commissioners in accordance with generally accepted zoning principles (Tr. 2267), and this testimony was not contradicted.

It was neither charged nor proven: that the alleged bribe was given to influence Baggett in the performance of any specific act in any specific matter; that there was ever any discussion or agreement between Rocks and Baggett that the purpose of the alleged bribe was to influence Baggett; that Rocks intended that Baggett perform any improper act on his behalf; or that any improper act was ever performed by Baggett on behalf of Rocks. In this respect, as the Government counsel acknowledged from the outset, the case proceeded upon a theory unlike "most, indeed, perhaps all, of the cases, the bribery cases, under 1952, that have arisen thus far, in the past . . ." (Hrg. 5/7/70, Tr. 82).

In seeking acquittal, at trial, Petitioner contended that the case involved activity which was essentially local. The use of an interstate facility, he urged, was only a matter of happenstance and so minimal and incidental to the general course of conduct that the case was not within the reach of 18 U.S.C. §1952. It was also contended, in pretrial motions for dismissal and in the motions for acquittal, that the conduct of the Petitioner did not amount to bribery in violation of the Maryland law and that, as a consequence, the "unlawful activity" element of the Federal statute was not established. Although there were virtually no cases constru-

ing the Maryland bribery statute, the authorities from other jurisdictions, it was noted, were in conflict, a substantial number of them holding that conduct such as that of Rocks here was not bribery. The District Judge declined to enter a judgment of acquittal and submitted the case to the jury.

After the jurors had deliberated an entire day without reaching a verdict, they asked permission to recess (Tr. 3434, 3453). That evening, during recess, an article was published on the front page of the local section of the Norfolk evening newspaper, stating, *inter alia*, that:

1. Baggett, charged in a similar indictment, had been convicted in Maryland of accepting a bribe;
2. Sentencing of Baggett which could involve up to five years in prison and a $10,000 fine had been delayed pending the outcome of the Rocks case;
3. Rocks' trial had been transferred to Norfolk because of a flood of publicity growing out of the Baggett trial;
4. Rocks had been acquitted last year along with another man for federal fraud and conspiracy involving $2.6 million in construction loan funds.

When the jurors assembled the next morning, they returned their verdict within minutes.

On the basis of certain information which came to the attention of defense counsel and which indicated that one or more of the jurors had read the prejudicial article during deliberations, a motion was made for the Court to assume jurisdiction over further examination of the jurors on that issue and for the granting of a new trial. The District Judge held a hearing on February 23, 1972, himself questioning the jurors, but denying defense counsel the right to cross examine and declining to pose a number of inquiries which were requested of him.

In spite of the severe limitations imposed by the District Judge, six of the jurors gave testimony about the article, three of them relating conversations among jurors during the brief deliberations on the second day. Juror Bowers testified that he had seen the headlines but had not read the article (Hrg., Tr. 20). When asked whether he heard anyone discuss the article itself during deliberations, he stated that he could not remember (Hrg., Tr. 22-25). Counsel requested permission to cross examine Juror Bowers on the limited issue of his alleged failure of recollection, but the District Judge refused (Hrg., Tr. 25-26). Juror Early said that he heard a juror ask if anyone had seen anything in the newspaper but, he added, he could not recall either the identity of the juror who had made this inquiry or that of the juror who had answered (Hrg., Tr. 38-39). The District Judge again denied counsel the right to cross examine (Hrg., Tr. 40).

Juror Neese testified specifically that there was discussion of the article during deliberations; that some of the jurors said they had read it; and that this conversation, to the best of her recollection, had taken place among three jurors who, at the close of the first day's proceedings, had voted for acquittal. The testimony of Juror Neese was that:

> "Q. You heard talk among jurors that an article had appeared in the paper? A. Yes, sir.
>
> "Q. Can you remember anything else about what was said or who might have said that, or a response by any juror? A. No, I don't know specifically who said what. It was just vague discussions regarding the fact that an article had appeared in the paper and *I do know that some of the jurors had read it* but who, and what they read, I can't say for sure."
>
> * * * * * *
>
> "Q. Now, was this more than one juror that you heard discussing the fact that he or she had read it? A. I think it was two.

"Q. You can't recall at this time who they were? A. No, sir.

"Q. And can you recall, other than what you have told us, anything else about this, as to what the discussion might have been?

"*I think what you said is that the discussion was that an article had appeared in the paper and the discussion indicated that some of the jurors had read it. Is that correct? A. Yes, sir.*

* * * * * *

"Q. And you don't remember whether it was a man and a woman discussing it or two women or two men? A. Well, there were three jurors, of course, as you know, when the verdict was given, who were — who voted 'not guilty' and of course when we went in there the next morning, I would suppose — or I think that it was those three who were discussing the article." (Hrg., Tr. 40-57) (Emphasis Supplied.)

Counsel's request to develop the testimony of Juror Neese was denied (Hrg., Tr. 58). Similarly, the District Judge refused to question Juror Neese himself as to the location of the various jurors at the time of the discussion and whether the persons overheard discussing the article were men or women or older or younger jurors (Hrg., Tr. 59).

Seven of the jurors had gone to a restaurant across the street from the court house immediately after the verdict was returned. The article was discussed by them as they entered the restaurant, while they sat there and as they dispersed. Juror Bowers recalled that, either just before or just after the group left the restaurant, someone commented to him, "We made the paper" (Hrg., Tr. 97, 101-2). Juror Miller recalled that, while they were drinking coffee, one of the jurors, the identity of whom he did not recall, commented that, "They must have read the article" and later, while walking toward his car, he asked, "What article?" and

received the reply, "You read the article when you get home and you'll find out" (Hrg., Tr. 90-95). Juror Levine testified that, while sitting at the table in the restaurant, she heard one of the jurors say, "[T]hat it was the newspaper article which had convinced them. Now, that is what I heard about the newspaper" (Hrg., Tr. 76-77). Juror Stearns testified that, after she left the restaurant with Juror Seiler and started home, she heard somebody say, "Well, I wonder if they read it" (Hrg., Tr. 110-11).

Counsel requested the District Judge, in light of the testimony of Juror Neese, to inquire of the three jurors who had originally voted for acquittal and to ask them, specifically, whether they had engaged in the discussion which Juror Neese had overheard (Hrg., Tr. 116-17). The District Judge denied the request (Hrg., Tr. 120). Similarly denied were requests to examine more fully Jurors Bowers, Miller and Levine as to the incidents which they had related. A number of other suggested questions, all of them going to the essential issue, were also refused (Hrg., Tr. 14, 16, 25, 26, 41-42, 50-54, 59, 64, 77-79).

The District Judge found that none of the jurors had read the article before the verdict was rendered. The fragmentary record which resulted from the denial of cross examination and the refusal to develop lines of inquiry was used as the basis for disregarding or disbelieving the testimony of half the jurors. The testimony of Juror Neese was dismissed altogether (Opinion, App. B, pp. 15a-16a). The Court apparently chose to disbelieve the testimony of Jurors Miller, Bowers, and Levine concerning mention of the article after verdict. The testimony of Juror Stearns, which related to a different conversation, was accepted as a substitute for the incidents related by the other three (Opinion, App. B, pp. 16a-17a). A new trial was denied.

Judgment of conviction and sentence, imposing upon Petitioner a 15 month term of imprisonment, was entered on June 16, 1972. Notice of appeal was entered immediately. On July 1, 1972, while the appeal was pending, there went into effect in Maryland a uniform statute which conferred upon its highest court, the Court of Appeals, jurisdiction to answer questions of law certified to it by Courts of Appeals of the United States. The Petitioner filed a motion for certification with the Fourth Circuit, suggesting that the case raised a number of issues relating to the Maryland crime of bribery, none of which had previously been decided by the highest court of that State, and that the authorities from other States, on the same issues, were in conflict. Certification was suggested as the vehicle for permitting the Fourth Circuit to avoid the necessity of making determinations of Maryland law without any clear direction from the Maryland courts.

The Court of Appeals entered an order denying the motion for certification. In its opinion and judgment, filed on June 14, 1973, the Court of Appeals adopted, as its own, the opinion of the District Judge with respect to the post-trial hearing. The Court of Appeals, further, rejected summarily the arguments that the use of interstate facilities was insufficient to amount to a violation of 18 U.S.C. §1952 and that the Government had not made out a case of bribery under Maryland law.

REASONS FOR GRANTING THE WRIT

I. THIS COURT, IN THE EXERCISE OF ITS SUPERVISORY ROLE OVER THE ADMINISTRATION OF JUSTICE IN THE FEDERAL COURTS, AND IN THE LIGHT OF RECENT AMENDMENTS TO THE CODE OF PROFESSIONAL ETHICS, SHOULD REQUIRE THAT DEFENSE COUNSEL BE AFFORDED THE RIGHT OF CROSS-EXAMINATION IN POST-TRIAL HEARINGS INVOLVING JUROR MISCONDUCT.

II. PETITIONER WAS DENIED DUE PROCESS OF LAW AND EFFECTIVE ASSISTANCE OF COUNSEL WHEN, IN A POST-TRIAL HEARING INVOLVING JUROR MISCONDUCT, AFTER IT APPEARED THAT ONE OR MORE JURORS MAY HAVE READ A PREJUDICIAL ARTICLE IN THE COURSE OF THEIR DELIBERATIONS, DEFENSE COUNSEL WAS DENIED THE RIGHT OF CROSS-EXAMINATION, THE TRIAL JUDGE REFUSED TO ASK RELEVANT NON-CUMULATIVE QUESTIONS, AND, ON THE BASIS OF THE FRAGMENTARY RECORD, IT WAS HELD THAT PETITIONER HAD NOT SUSTAINED HIS BURDEN OF PROVING THAT JUROR MISCONDUCT HAD IN FACT OCCURRED.

The testimony of Jurors Miller, Neese, Levine, Bowers and Stearns, all of whom recalled some reference to the prejudicial newspaper article, when compared with the testimony of each juror that he or she had not personally read the article, highlights the fundamental error of the trial court in denying the right of cross-examination. In short, the effect of the decision below is that when a substantiated allegation of jury misconduct is made, a court may deny counsel the right to examine the jurors personally, ask only such questions as it desires, and then find that the evidence does not sustain the allegation on the basis of the fragmentary record adduced from its limited questioning. Approval of this contention would constitute the death knell of the highly desirable conduct exemplified by Petitioner's defense counsel in reporting possible juror misconduct to the Court promptly after its discovery.

In 44 states (including Virginia) and the District of Columbia, counsel may by law interrogate jurors *ex parte*

and report the matter to the court only upon the conclusion of the inquiries. Cf. ABA Ethics Op. 319 (1968); ABA Code of Professional Responsibility, EC7-29 (1969). The Virginia Code of Professional Responsibility, promulgated in 1971, pursuant to the revised ABA canons, was in effect in the Eastern District of Virginia where the trial in this case had been held and where the jurors were located. It provides that:

> "After the trial, communication by a lawyer with jurors is permitted so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. *Were a lawyer to be prohibited from communicating after trial with a juror, he could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected.*" EC 7-29, p. 50 (Emphasis supplied).

Notwithstanding this explicit authority for full *ex parte* inquiry by defense counsel, the questioning in the present case had been suspended voluntarily, and counsel had invited Court supervision, as soon as it became apparent that the verdict might be subject to challenge. The Court, upon acceptance of the invitation, then precluded defense counsel from any further meaningful participation. If the denial of cross-examination is to be sanctioned under these circumstances, its effect will not be to protect jurors, but, on the contrary, only to discourage lawyers in future cases from inviting Court supervision.

The courts below, in denying cross-examination, disregarded entirely the procedure suggested by Professor Moore:

> "Where a juror's testimony is competent to support or impeach the verdict it may be shown by affidavit; but where there is a sufficient showing to warrant a hearing it will often be advisable, when feasible, for the court to conduct a hearing *and take oral testimony that is sub-*

ject to cross-examination." 6A Moore, *Federal Practice*, Sec. 59.08(4), p. 3814 (Emphasis supplied).

Cf., also, *Remmer v. United States*, 347 U.S. 227, 229, 230; *Ryan v. United States*, 191 F.2d 779, 781 (U.S. App., D.C., 1951).

The Fourth Circuit itself, in *Guthrie v. United States*, 387 F.2d 569, 572 (1967), had earlier held that a post-trial inquiry into jury misconduct "without the safeguard of cross-examination" is "not an adequate method". In retreating from *Guthrie* in the present case, however, the courts below, citing *Rakes v. United States*, 169 F.2d 739 (4th Cir., 1948), equated all cross-examination with impermissible "harassment" and "searching hostile inquiry". *Rakes*, however, is patently inapposite. In that case, Judge Prettyman, in an era before the dramatic change in ethical canons, condemned only *ex parte* questioning of jurors, not examination under court supervision. Cross-examination need not be either harassing or hostile. Throughout the trial, counsel for each side sought advance rulings and had adhered to the Court's rulings (E.g., Tr. 18, 414). There was no reason to believe that counsel would have behaved differently in the post-trial setting. The record in the present case, particularly the examination of Juror Neese, provides classic examples of situations where cross-examination might have achieved an expansion, limitation or modification of testimony.

Cross-examination is vital if the truth is to be discovered about an issue such as the one involved in the post-trial hearing. To ask direct questions and accept the answers without additional inquiry is to transform a "full investigation" (Cf. 2 Wright, Federal Practice and Procedure, §554 (1969)) into a ritual where answers supporting the verdict are perfunctorily given and accepted and where it is impermissibly difficult for a defendant to sustain his burden of proving jury misconduct.

There is no reason for assuming that the usual technique for determining the truth, examination and cross-examination, is less likely to be effective after a verdict than before it. Petitioner is aware of no other context in an Anglo-Saxon criminal trial where examination by counsel has been replaced by examination by the Court except in *voir dire* examination of prospective jurors. The reasons supporting judicial discretion to conduct *voir dire* — saving of time; avoidance of conduct aimed at influencing jurors; concern that counsel-administered *voir dire* may be aimed at producing a partial rather than impartial jury (2 Wright, Federal Practice and Procedure, §381 (1969)) are obviously inapplicable where the issue occurs after verdict and involves a determination of whether a defendant has been deprived of a constitutional right.

This case, too, does not involve a juror who, in the course of trial, read a newspaper article, and where, prior to verdict, it was necessary to examine him to determine whether the trial should go forward. Present here is a situation involving (1) an article which was clearly prejudicial, (2) which was published at the crucial point of jury deliberations and (3) where evidence that jurors may have read the article was unknown to counsel until after verdict.[1] Counsel for Petitioner recognized that his inquiry would have been confined to whether the jurors had read the article or learned of its contents, and he sought no greater latitude.[2] He had no intent to explore the jurors' mental processes, for, as he set forth in his own motion, the issue of prejudice was for the Court to determine as a matter of law. See: *Mattox v. United States*,

[1] No issue of waiver is involved. The failure to demand sequestration cannot be deemed waiver. *United States v. Palermo*, 410 F.2d 468, 472 (7th Cir., 1969).

[2] Counsel made it clear that the object was solely to determine if the contents of the article in which the conviction was prominently mentioned had been discussed (Hrg., Tr. 3-4, 14-15).

146 U.S. 140, 148-150; *Remmer v. United States*, 347 U.S. 227, 229, 230; *Downey v. Peyton*, 451 F.2d 237, 239 (4th Cir., 1971); *United States v. McMann*, 435 F.2d 813, 819 (2d Cir., 1970); *United States v. McKinney*, 429 F.2d 1019, 1030 (5th Cir., 1970). There was, under these circumstances, no reason to anticipate the occurrence of any abuse in the course of the requested cross-examination.

The courts below relied on *Miller v. United States*, 403 F.2d 77, 82 (2d Cir., 1968), as authority for the proposition that "a convicted defendant does not have an unlimited right to cross examine jurors" (Opinion, App. B, p. 13a). Petitioner has never asserted an "unlimited right" to cross examine jurors (Hrg., Tr. 26). His counsel did not object to reviewing the subject matter of his questions with the District Judge in advance of asking the questions. Petitioner asserted only the simple right to ask relevant, non-cumulative, non-harassing questions designed to determine whether a juror read the article or learned of its contents. In substance, the courts below read *Miller* to say that this kind of examination can be denied.

Miller does not support such an interpretation. In *Miller*, one year after trial, defense counsel hired a lay investigator to interrogate jurors about matters, including questions relating to their mental processes during the jury deliberations, and the investigator had made announced visits to jurors homes and engaged in long and involved conversation with them. The subject matter of the investigation related to an issue raised and determined by the trial court before verdict and raised again in a motion for a new trial. The Court of Appeals declined to alter an injunction prohibiting further interrogations and in the process noted that "the judge may well find it better that he control any questioning, whether by having it done in open court, as the Supreme Court directed in *Remmer v. United States*, 347 U.S. 227, 74 S. Ct.

450, 98 L. Ed. 654 (1954) by allowing depositions where the prosecutor would have an opportunity to object to improper questions, or by passing in advance on the questions sought to be propounded." 403 F.2d 77, 82.

III. THE DECISION IN THE PRESENT CASE, IN UPHOLDING A CONVICTION UNDER 18 U.S.C. §1952 WHERE THE SINGLE USE OF AN INTERSTATE FACILITY WAS A MERE HAPPENSTANCE AND INCIDENTAL TO A COURSE OF ACTIVITY WHICH WAS ESSENTIALLY LOCAL, CONFLICTS WITH THE DECISIONS OF THIS COURT AND OF THE SEVENTH CIRCUIT IN *REWIS v. UNITED STATES*, 401 U.S. 808, AND *UNITED STATES v. ALTOBELLA*, 442 F.2d 310 (7th Cir., 1971).

In its portion relevant here, the Federal Anti-Racketeering Act, 18 U.S.C. §1952, subjects to criminal penalty one who "travels in interstate . . . commerce or who uses any facility in interstate . . . commerce including the mail with intent . . . to promote, manage, establish, carry on, or facilitate the promotion, management, establishment or carrying on of . . . unlawful activity . . . and thereafter performs or attempts to perform any of the acts specified . . ." The term "unlawful activity" is defined to include "bribery in violation of the laws of the State in which committed" and such other locally prohibited activities as "extortion" and the operation of a "business enterprise involving gambling."

The present case represents a course of conduct which was essentially local and in which the single use of interstate commerce was incidental and insubstantial. It was precisely the type of activity which was held to be beyond the reach of §1952 by this Court in *Rewis v. United States*, 401 U.S. 808, and by the Seventh Circuit, applying the rules of *Rewis*, in *United States v. Altobella*, 442 F.2d 310 (7th Cir., 1971). The decision below, therefore, is in conflict with decisions rendered by this Court and by at least one other Federal Circuit.

The Government, in the court below, argued that *Altobella* "is inconsistent with the Fourth Circuit authorities", and it contended further that "nothing in *Rewis* . . . justifies the Seventh Circuit's decision in *Altobella*" (Gov't. Brief, pp. 27, 28). We submit, to the contrary, that *Altobella* was decided correctly and that the Fourth Circuit, and not the Seventh, fails to perceive the significance of *Rewis*.

For a period of almost nine years after the passage of the Federal Anti-Racketeering Act, the Government could point to various decisions by lower courts in which it had obtained an expansive reading of the statute. In *Rewis v. United States*, 401 U.S. 808, however, this Court held that the Act was not entitled to such lavish interpretation. Involved there were two Florida residents who ran a gambling operation, patronized by Georgia residents, in a Florida town a few miles south of Georgia, and who were alleged to have caused the interstate movement of their patrons. This Court reversed the convictions, holding that the operation of a gambling enterprise, frequented by out-of-state bettors, while literally within the language of §1952, did not constitute activity sufficient to violate the Act.

In the present case, in the courts below, the Government dismissed *Rewis* lightly, terming it a "tired nag"[3] and suggesting that its holding be restricted to the peculiar facts of that case. This Court, however, had obviously intended more, teaching, first, that the statute may not be employed mechanically, and second, that, operating as it does in the area of federal-state relations, the statute may not be deemed to have been transgressed unless there is present a substantial course of conduct attributable to each of its elements.

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[3] See, Government's Response to the Defendant's Motion for a New Trial, filed 3/30/72, p. 12.

Section 1952 must be applied, the Court noted in *Rewis*, with recognition of the fact that it "was aimed primarily at organized crime and, more specifically, at persons who reside in one state while operating or managing illegal activities located in another" (401 U.S. 808, 811). There are overriding policy considerations which require that the lower federal courts exercise caution before finding that conduct, essentially local, amounts to the federal crime:

> *Given the ease with which citizens of our Nation are able to travel and the existence of many multistate metropolitan areas*, substantial amounts of criminal activity, traditionally subject to state regulation, are patronized by out-of-state customers. In such a context, *Congress would certainly recognize that an expansive Travel Act would alter sensitive federal-state relationships, could overextend limited federal police resources*, and might well produce situations in which the geographical origin of customers, a matter of happenstance, would transform relatively minor state offenses into federal felonies." 401 U.S. 808, 812 (Emphasis supplied).

The Court went on to note that the legislative history did not support the Government's "broad-ranging interpretation" of Section 1952 and that "even if this lack of support were less apparent, ambiguity concerning the ambit of criminal statutes, should be resolved in favor of lenity . . ." (401 U.S. 812). Finally, the Court rejected outright the Government's contention that the Act is violated by one who, in committing one of the prohibited local crimes, can "reasonably forsee" that an interstate facility will be used, saying that ". . . there is little, if any, evidence that Congress intended that forseeability should govern criminal liability" under this Federal statute (401 U.S. 808, 813).

The Seventh Circuit, within days of the decision in *Rewis*, similarly rebuffed a Government effort to have the Anti-

Racketeering Act encompass an essentially local crime merely because of slight interstate involvement. In *United States v. Altobella*, 442 F.2d 310 (7th Cir., 1971), the defendants, Illinois residents, extorted money from a Philadelphia businessman whom they encountered at a Chicago hotel. They lured him to an apartment where, after photographing him in a compromising position, they threatened to inform his wife if he did not pay them $2,500. They drove him to his hotel so that he could cash a check to be drawn on his Philadelphia bank for a $100 down payment. It was undisputed that the defendants "knew their victim was from Philadelphia"; that they "knew he intended to obtain the $100 by cashing a personal check"; that they caused him to cash the check; that the check was sent to Philadelphia from Chicago in the ordinary course of collection; and that one defendant accepted the $100 and "thereafter distributed" half to the other defendant (442 F.2d 310, 318).

Although the interstate movement of the check representing the extortion proceeds supplied some element of the use of an interstate facility, and although the defendants received and distributed the funds after the interstate movement, the Seventh Circuit nevertheless reversed the defendants' convictions, saying:

> "We do not believe Congress intended to authorize federal intervention in local law enforcement in a marginal case such as this. We are guided by the Supreme Court's admonition that in ascertaining the scope of congressional legislation, a due regard for a proper adjustment of the local and national interests in our federal scheme must always be in the background . . ." 442 F.2d 310, 316.

The Court also quoted the remark of the Attorney General, when the proposed Act was before the Congress, that, "Obviously, we are not trying to curtail the sporadic, casual in-

volvement in these offenses . . ." (442 F.2d 310, 313). It was held that Section 1952 "required a more significant use of a facility in interstate commerce in aid of the defendant's unlawful activity than is reflected on this record," and that, "[W]hen the use of the interstate facility and the subsequent acts are as minimal and incidental as in this case, we do not believe that a federal crime has been committed." See also: *United States v. McCormick*, 442 F.2d 316 (7th Cir., 1971);[4] *United States v. Stagman*, 446 F.2d 489, 493 (6th Cir., 1971).

The principal activity of Petitioner, who was himself a resident of Maryland, was in that State. Baggett was both a Maryland resident and an official of a Maryland county. The tractor was purchased from a Maryland dealer, and, under the Government's theory, was used from time to time on Baggett's Maryland farm. The State statute, which was used as a foundation of the Federal charge, is one which regulates the conduct of State and local officials in Maryland. Other than the writing of the check in the District of Columbia, a mere happenstance, this case has no connection with any jurisdiction other than Maryland. This is not a case involving organized crime. It is not concerned with pervasive multi-state criminality requiring federal assistance to local law enforcement officials and it is not a situation in

[4] There, an Indiana lottery operator advertised for salesmen to peddle lottery tickets in an Indiana newspaper which also had out-of-state circulation, and the Government relied on the interstate mailings of the paper as a basis for jurisdiction. In reversing the defendant's conviction under 18 U.S.C. §1952, the Court of Appeals pointed out that in *Rewis* this Court had "emphasized the intent of Congress to strike at the truly interstate operations of organized crime" (442 F.2d 316, 317). After reviewing *Rewis* and *Altobella*, the Seventh Circuit stated that: "There too the activities engaged in by defendant were essentially local. The role played by the interstate mailings was, 'a matter of happenstance' and 'minimal and incidental' to the operation of the illegal lottery." (442 F.2d 316, 318).

which a person resides in one state and conducts unlawful activities in another. The only act attributed to Petitioner, moreover, in either the indictment or in the proof, was the signing of the check.

IV. IT IS APPROPRIATE, IN A FEDERAL CRIMINAL PROSECUTION IN WHICH VIOLATION OF STATE LAW IS AN ELEMENT OF THE FEDERAL CRIME, TO CERTIFY UNRESOLVED ISSUES OF STATE LAW, WHICH MAY BE DISPOSITIVE OF THE CASE, TO THE HIGHEST COURT OF THE STATE PURSUANT TO THE UNIFORM CERTIFICATION OF QUESTIONS OF LAW ACT.

V. THE COURT BELOW SHOULD HAVE CERTIFIED UNRESOLVED QUESTIONS OF MARYLAND BRIBERY LAW, WHICH MIGHT HAVE BEEN DISPOSITIVE OF THIS FEDERAL CRIMINAL CASE, AND ON WHICH AUTHORITIES FROM OTHER JURISDICTIONS WERE IN CONFLICT, TO THE COURT OF APPEALS OF MARYLAND PURSUANT TO THE UNIFORM CERTIFICATION OF QUESTIONS OF LAW ACT.

As previously noted, Petitioner filed a motion in the Court of Appeals, asking that certain unresolved questions of Maryland bribery law be certified to the Court of Appeals of Maryland under the Uniform Certification of Law Act. Because the certification statute did not go into effect until July 1, 1972, while the appeal was pending, this motion could not have been presented to the district court.

The Court of Appeals denied the motion to certify without assigning any reasons for its action (App. A, p. 3a). The denial, however, was necessarily founded on an acceptance of one of two Government arguments against certification: (1) that illegality under state law is not an essential element in a federal prosecution under 18 U.S.C. §1952, and (2) that certification is inappropriate in a federal criminal case, even one involving state law.

The indictment in this case had alleged, in broad terms, that the unlawful activity for which the interstate facility

was allegedly used, was "bribery of said Jesse S. Baggett, then a member of the Board of County Commissioners of Prince George's County, Maryland, by the said Ralph D. Rocks, in violation of Article 27, Section 23 of the Annotated Code of Maryland (1957) . . ." In pre-trial hearings, and at the trial itself, the Government acknowledged that it would not prove a bribery agreement, either express or implied, nor even any overt bribery discussion, between Petitioner and Baggett. It conceded, further, that its case contained no proof that a tractor would be given or loaned in return for specific acts or otherwise for a specific *quid pro quo* (Hrg. 5/7/70, Tr. 82-84; Hrg. 6/4/70, Tr. 26-31, 52; Hrg. 3/19/71, Tr. 59; Hrg. 9/10/71, Tr. 81, 92-95; Trial Tr. 3249-50, 3263). It also acknowledged that its case involved no showing of improper rulings or official actions by Baggett and no showing that Rocks sought or obtained any result to which he was not otherwise entitled (Hrg. 5/7/70, Tr. 87-88; Hrg. 6/4/70, Tr. 36; Trial Tr. 3378). Instead, terming this a "novel bribery case" (Hrg. 5/7/70, Tr. 82-83), the Government argued that no agreement or discussion between donor and donee is necessary, that a bribe need not be for a specific act or for designated specific acts or for a pending matter, that there need be no showing that the donor sought or secured an undeserved outcome and that a long-standing friendship between the donor and donee, with the former periodically doing favors for the latter, and with the donor having business with the governmental agency of which the donee was a member, was sufficient to establish bribery (*Ibid.*).

In arguing for dismissal of the indictment, and for acquittal on the merits, defense counsel repeatedly objected that the Government's theory and evidence failed in several respects to establish bribery in violation of Maryland law (E.g., Hrg. 5/7/70, Tr. 27-31, 41-42, 44, 98; Hrg. 6/4/70, Tr.

30-31; Trial Tr. 1799, 1806-10, 3112-13; Motions to Dismiss and Motions for Particulars *passim*). In every other prosecution under 18 U.S.C. §1952 involving the state offense of bribery, it was pointed out, there had been an overt agreement or offer to give a public official something of value in return for specific corrupt action in a matter pending before the official.[5] Similarly, in the few reported cases under the Maryland bribery statute, the bribe had consisted of payment for a specific act.[6]

In the certification motion, as in the trial court, it was explained that the authorities throughout the country were divided on the question whether a specific agreement is a necessary element of bribery[7] and also on the question whether a payment, in order to constitute a bribe, must

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[5] See, e.g. *United States v. Parzow*, 391 F.2d 240, 241 (4th Cir., 1968) (where the court pointed out that the evidence was sufficient to show "that Parzow and Parrish made an *agreement* whereby Parrish voted in favor of *re-zoning a tract of land to permit its use as a shopping center* . . ." in exchange for over $5,000 worth of securities) (emphasis supplied); *United States v. Wechsler*, 392 F.2d 344, 346 (4th Cir., 1968), certiorari denied 392 U.S. 932 (payment of money to local government officials for their votes to re-zone a particular tract of land from residential to mobile homes); *United States v. Corallo*, 413 F.2d 1306, 1311 (2d Cir., 1969) (a negotiated agreement to award a specific governmental contract in return for a 7½ percent kickback); *United States v. Kubacki*, 237 F. Supp. 638, 641 (E.D. Pa., 1965) (an "agreement" that a public official would award a particular contract in return for a cash payment); *United States v. Zirpolo*, 288 F. Supp. 993, 999-1000 (D. N.J., 1968) (agreement that the mayor of a town would grant a particular building permit in return for $50,000).

[6] *Bosco v. State*, 157 Md. 407, 146 A. 238 (1929); *Sugarman v. State*, 173 Md. 52, 195 A. 324 (1937); *Cunningham v. State*, 190 Md. 578, 59 A.2d 337 (1948), and *Glickfield v. State*, 203 Md. 400, 101 A.2d 229 (1953).

[7] Compare *State v. Harrah*, 132 S.E. 654, 655 (W. Va., 1926); *People v. Schneider*, 14 N.W.2d 819 (Mich., 1944); *Selvidge v. State*, 72 S.W.2d 1079, 1080 (Tex., 1934); *Clews v. People*, 377 P.2d 125 (1962); and *White v. State*, 245 S.W.2d 704 (Tex., 1952), all holding that an agreement is necessary; with *Commonwealth v. Donovan*, 49 N.E. 104, 109 (Mass., 1898); *People v. Lyons*, 122 N.E.2d 809 (Ill., 1954); *McLemore v. State*, 125 So. 2d 86, 89 suggestion of error overruled 126 So. 2d 236 (Miss., 1961), appeal dismissed and certiorari denied, 368 U.S. 70.

relate to a specific act or acts rather than a general course of conduct.[8] In *Glickfield v. State*, 203 Md. 400, 101 A.2d 229 (1953), moreover, the Maryland Court appeared to depart from the majority rule throughout the country and to construe the Maryland bribery statute as requiring an intent to bring about an outcome to which the donor was not otherwise entitled.[9]

The Government has never disputed that there are sharp conflicts among the authorities with respect to the bribery law issues previously discussed and that there are no controlling precedents in the Court of Appeals of Maryland on these issues. The Government did suggest, in its opposition to certification, contrary to its position in the trial court, that it had proven a bribery agreement and that the bribe had been for designated specific acts. The Court of Appeals, however, rejected this argument, which had no basis in the record, and, in its opinion in the companion *Baggett* case, it stated that "The Government's evidence did not show a specific *quid pro quo* from Baggett to Rocks in return for the $3,500 check."[10]

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[8] See 11 C.J.S. "Bribery", Sec. 2, pp. 849-50; *State v. Hazellief*, 148 So. 2d 28 (Fla. App., 1962); *In re Yee Gee*, 83 F. 145 (D. Wash., 1897); *Streeter v. State*, 104 So. 858 (Fla., 1925); *State v. Good*, 156 S.E.2d 8 (W. Va., 1967); *Barefield v. State*, 14 Ala. 603 (1848); *Newman v. State*, 23 S.E. 831 (Ga., 1895); *Azrak v. State*, 183 So. 2d 712 (Fla. App., 1966); *State v. Hibicke*, 56 N.W.2d 818 (Wis., 1953); *Dukehart-Hughes Tractor & Equipment Co. v. United States*, 341 F.2d 613 (Ct. of Claims, 1965).

[9] In that case, where the defendant was charged with attempting to bribe an athlete to affect the score of a game, the Court said that "alteration of outcome" is "implicit in the word 'bribe'" and that, "in the context, we think the bribery of a player refers to a corrupt influence upon his performance with reference to the outcome, in this case, the score" (203 Md. 400, 403). In this respect, the Maryland rule appears to be contrary to the weight of authority. *Cf., United States v. Raff*, 161 F. Supp. 276, 280 (M.D. Pa., 1958), and the cases cited therein; *Sugarman v. State*, 173 Md. 52, 195 A. 324 (1937).

[10] *United States v. Baggett*, No. 72-1548, decided June 19, 1973 and not yet officially reported.

The Government was wholly incorrect in its argument, in opposition to certification, that it was unnecessary to prove that the enterprise, in aid of which the interstate facility was allegedly utilized, was unlawful under state law. This Court, in *United States v. Nardello*, 393 U.S. 286, held otherwise. There, the Court considered the sufficiency of an indictment charging the use of interstate facilities "with intent to carry on" extortion in violation of the laws of Pennsylvania. The indictment, which referred to a specific Pennsylvania statute which prohibited extortion under the title of "blackmail", was held to be sufficient because the terms "extortion" and "blackmail" are synonymous. In its discussion of the Anti-Racketeering Act, this Court noted that "Although Congress directed that content should be given to the term 'extortion' in §1952 *by resort to state law*, it otherwise left that term undefined", concluding that, "Congress intended that extortion should refer to those *acts prohibited by state law . . .*" and that "*the inquiry is . . . whether the particular State involved prohibits the extortionate activity charged*" (393 U.S. 286, 290, 295) (Emphasis supplied). Extortion and bribery are proscribed by the same subsection of Section 1952. In the language of *Nardello*, therefore, it was necessary to inquire whether Maryland prohibited, by Article 27, Section 23 of its Code, the activity charged as bribery in this case. See also: *United States v. D'Amato*, 436 F.2d 52, 53-55 (3rd Cir., 1970); *United States v. Stagman*, 446 F.2d 489, 492, 493 (6th Cir., 1971); and *Dillon v. United States*, 391 F.2d 433, 436 (10th Cir., 1968).

The Government's other argument, that certification is inappropriate in a federal criminal prosecution, but should be limited to diversity cases, has no basis in the language of the Uniform Certification Act or in the decisions of the courts. Section 1 of the Uniform Act provides that certification may be used "in any proceeding" where there are

questions of state law involved and as to which it appears that "there is no controlling precedent" in the decisions of the highest appellate court of the state. The reasons underlying the procedure of certification, set forth and recommended by this Court for the first time in *Clay v. Sun Insurance Office, Ltd.*, 363 U.S. 207, are as applicable to a case such as the present one as to a diversity case.

Finally, this Court and the lower federal courts, other than the Fourth Circuit, have not limited the certification procedure to diversity cases. It has been used in criminal cases and in cases arising under federal statutes. See, e.g., *Dresner v. City of Tallahassee*, 375 U.S. 136 (criminal case arising in state courts); *Norton v. Benjamin*, 220 A.2d 248 (Maine, 1966); *Pierce v. Secretary of Health, Education and Welfare*, 302 F. Supp. 508 (S.D., Me., 1969); *In re Elliott*, 446 P.2d 347 (Wash., 1968).

This case is a novel "bribery" case which calls for the resolution of unusual state legal issues. It arises under a federal statute which incorporates state criminal law and which was specifically designed to assist state law enforcement officials.[11] Moreover, the legal issues in this case go far beyond the scope of normal state criminal law which regulates the conduct of persons generally. Here, we have matters of the State's policy toward its own public officials and toward those who deal directly with those officials. Cf., *Coleman v. Ginsberg*, 428 F.2d 767 (2d Cir., 1970). In light of these factors, certification of the state bribery law issues to the Court of Appeals of Maryland would have been particularly appropriate.

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[11] House Report No. 966, "Prohibiting Travel or Transportation in Aid of Racketeering Enterprises," 87th Cong., 1st Sess., p. 3. Senate Report No. 644, "Prohibiting Travel or Transportation in Aid of Racketeering Enterprises," 87th Cong., 1st Sess., p. 4.

CONCLUSION

It is respectfully submitted that for the foregoing reasons this petition for a writ of certiorari should be granted.

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APPENDIX A

In The
United States Court of Appeals for the Fourth Circuit

No. 72-1862

United States of America,
Appellee,

v.

Ralph D. Rocks,
Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Alexander Harvey, II, District Judge.

Argued December 4, 1972. Decided June 14, 1973.

Before Haynsworth, Chief Judge and Russell and Widener, Circuit Judges.

Arnold M. Weiner (A. Kenneth Pye on brief) for Appellant; Russell T. Baker, Jr., Assistant United States Attorney, (George Beall, United States Attorney, and Barnet D. Skolnik, Attorney, United States Department of Justice, on brief) for Appellee.

PER CURIAM:

The defendant, Rocks, and Jesse S. Baggett were jointly charged with a violation of the Travel Act.[1] Specifically, they were charged with causing the interstate movement of a $3500 check drawn by Rocks in the District of Columbia which Baggett used in Maryland to purchase a tractor for use on his farm. Baggett, first tried after a severance, was

[1] 18 U.S.C. §1952 and 18 U.S.C. §2.

convicted. Because Baggett's conviction occasioned extensive publicity in Baltimore and Washington, the trial of Rocks was transferred to Norfolk in the Eastern District of Virginia. A jury found him guilty.

From 1954 until he resigned in 1970, Baggett was a member of the Board of County Commissioners of Prince George's County, Maryland. From December 1964 until his resignation, he was the Chairman of that Board. The Board had final authority over all zoning matters and proceedings.

Rocks was a prosperous builder and developer, based in the District of Columbia. Between 1962-1968, he was a frequent applicant for variances and zoning changes in Prince George's County, Maryland. Typically, he sought increased population density rulings and other changes which would enhance the value of lands he had acquired for development and their development potential. His applications usually received favorable action by the Board of County Commissioners until Baggett learned of the governmental investigation of his receipt of the check mentioned above and his use of it for the purchase of the tractor.

Many questions are raised. The most serious ones arise out of the court's handling of a report that some of the jurors, during their deliberations, read or learned of a newspaper article in which the conviction of Baggett was reported, a fact which had not been disclosed to the Virginia jury.

The trial judge conducted an extensive examination of all of the jurors. He permitted counsel to suggest questions to be asked, but he screened them and placed all allowed questions himself. Atferwards, he found that none of the jurors had read the article or had been told of its report of Baggett's conviction until after their verdict.

The several questions arising out of that proceeding were fully discussed in an opinion. *United States v. Rocks*, E. D., Va., 339 F. Supp. 249. For the reasons there stated, we approve the procedures adopted by the trial judge and accept his findings.

The conviction is affirmed.

Affirmed.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE

Upon consideration of the motion to certify unresolved questions of Maryland Bribery Law to the Court of Appeals of Maryland, by counsel,

IT IS ORDERED that the motion is DENIED.

For the Court — By Direction.

/s/ WILLIAM K. SLATE, II,
Clerk.

APPENDIX B

United States of America

v.

Ralph D. Rocks

Crim. No. 230-71-N

United States District Court,
E. D. Virginia

March 9, 1972

HARVEY, District Judge.

After a trial that lasted more than three weeks, Ralph D. Rocks, defendant herein, was found guilty by a jury of a violation of 18 U.S.C. § 1952. Rocks and a co-defendant, Jesse S. Baggett, had been jointly indicted in the United States District Court for the District of Maryland and charged with the offense in question. Criminal No. 28958. A severance was thereafter granted, and Baggett was tried first in Baltimore. On October 27, 1971, the Maryland jury

found Baggett guilty as charged. Because of extensive publicity attending the Baggett trial, Rocks moved for a change of venue, and his case was removed to the Eastern District of Virginia for trial in Norfolk. The Rocks trial commenced on January 3, 1972 and was concluded by a guilty verdict returned by the jury on January 26, 1972.

Rocks has now filed a motion for a new trial based on various grounds. *Inter alia*, Rocks claims that the jury which convicted him was influenced by a newspaper article that appeared in the Norfolk *Ledger Star* on January 25, 1972.[1] He alleges that there were highly prejudicial facts contained in such article, that members of the jury read the article and that when such members of the jury considered the facts contained therein, his constitutional right to be confronted with the witnesses against him under the Sixth Amendment was infringed. In support of this portion of his motion for a new trial, the principal defense attorney filed an affidavit indicating that he had interviewed the foreman of the jury some ten days after the trial was concluded and that in response to such attorneys questions, certain statements had been made by the foreman mentioning the newspaper article in question.

After reviewing the motion and affidavit and conferring with counsel, the Court ordered a post-trial hearing to be held in Norfolk in connection with the questions raised. Briefs were filed, and after the testimony of all 12 jurors was heard in open court, counsel fully argued this aspect of the pending motion.

At conferences before the Rocks trial commenced, the Court had discussed with counsel whether or not the Virginia jury should be advised that the co-defendant Baggett had previously been tried. It was apparent that the fact of such a trial would come to the jury's attention when many of the witnesses who had testified at Baggett's trial were cross-examined at Rocks' trial with reference to their prior

[1] It has been agreed that consideration of the other grounds advanced by defendant in support of his motion will be deferred until after a decision herein.

testimony. Accordingly, over objection by the defendant Rocks, the Court ruled that it would advise the Virginia jury of the fact of the earlier trial but would not advise such jury of its outcome.

On January 3, 1972, in addressing the entire venire to determine if any prospective juror had read or otherwise learned about the previous trial, the Court said the following:

> "There has been a previous trial in this case involving the defendant Baggett. You, the members of the jury, are not to be concerned in any way with the outcome of that previous trial. Whether the defendant Baggett was acquitted, whether he was convicted or whether the trial was terminated in some other way should have no bearing whatsoever on your determination of the guilt or innocence of the defendant Rocks at this trial. You should decide the issues in this case solely on the evidence that is presented in this court room, the testimony of the witnesses and the exhibits that are put in evidence. So for this reason I am not going to tell you the outcome of the previous trial and you should not guess or speculate as to the outcome of that trial. That case has no bearing whatsoever on this one. Now let me ask you this, is there any one who has read about the previous trial? Again, I don't want you to tell us what you may have read or heard on the radio or seen on the television. I'll expand the question to include radio and television. Anybody who may have seen anything in the press or heard anything on the radio or television about the previous trial?"[2]

After the jury had been empanelled further instructions were given by the Court that same day to the twelve jurors and four alternates who were to hear the case, as follows (Tr. 6-7):

> "Now, it is very important that you not read anything in the newspapers about this case. Furthermore, it is

[2] The reporter's notes indicate that there was no response to this inquiry.

very important that you not look at any newspapers of yesterday or the day before or in the last week or so, that may have had something about this case in it.

"Furthermore, if there should be anything on the radio that you hear, in which this case is mentioned, please turn it off; don't listen to it, don't look at anything on television having to do with this case.

"It is extremely important that the only evidence which you should consider, the only information about the case which you should consider is that which you will hear right in this courtroom, either from witnesses, or by way of exhibits that are put in evidence.

"If anyone should talk to you about this case, please don't discuss it, don't discuss it even with your spouses or members of your family; and if anyone from the outside comes up and tries to talk to you about the case, please report it to me; because what you will decide this case on will be what you hear right in the courtroom and not what you may hear from someone on the outside."

These instructions were repeated, regularly throughout the trial (Tr. 389, 646, 1096, 1788, 2310). In the Court's final charge to the jury, which was delivered on January 25, 1972, the following was said (Tr. 3407, 3426):

"You will note that the indictment charges both the defendant Jesse S. Baggett and the defendant Ralph D. Rocks with committing the crime in question. For reasons that are of no concern to you, only the defendant Rocks has been tried in this case. The defendant Baggett was tried at an earlier date. As I have previously told you, you are not to be concerned in any way with the outcome of that previous trial. You have not been advised of the outcome of the Baggett trial because it has no bearing whatsoever on your determination of the guilt or innocence of the defendant Rocks in this trial. You are not to guess or speculate as to the outcome of the Baggett trial, and you are not to attach any significance to the fact that the defendant Baggett has previ-

ously been tried in Maryland and that the defendant Rocks has now been tried here in Virginia.

* * * * * *

"Now, during the trial of this case I have repeatedly instructed you not to read, listen to or observe any news stories concerning this case in newspapers, on radio or on television. In the event that any publicity in the news media may have come to your attention inadvertently or otherwise, I now instruct you to completely disregard any facts thereby brought to your attention. Your verdict may not be based upon anything which you may have heard outside the courtroom. The only evidence which you may consider in reaching your verdict is the evidence produced by way of witnesses who testified during the trial or by way of exhibits admitted in evidence."

The jury retired to commence its deliberations on January 25, 1972, at 11:20 A.M. At 4:55 P.M., the jury sent a note to the Court requesting permission to go home that evening and return to continue their consideration of the case the next morning. With the approval of counsel, the jury was permitted to disband for the evening and was instructed to return to resume its deliberation the next morning at 9:30 A.M. The following additional instruction was given to the jury before it was excused that evening (Tr. 3455):

"Now, it is particularly important tonight that you not consult with anyone, not with each other. Don't call another juror and discuss anything to do with this case or the deliberations. Don't discuss it with anyone at home and I would suggest that tonight and tomorrow morning you not read any newspapers at all and try not to listen to the radio or view anything on television, if there should be anything in the press relating to this case.

"If anyone approaches you and tries to discuss the case with you in any way between now and tomorrow morning when we will resume, you should bring it to my attention tomorrow morning.

"At this stage, with deliberations underway, it is very, very important that you not discuss the case with anyone at all.

"So the jury will be excused and we'll keep the exhibits in the jury room and lock the jury room if we can. You will be excused and we will return here in the courtroom tomorrow morning at 9:30."

That same afternoon, January 25, 1972, the following article had been printed in the *Ledger Star*, a Norfolk newspaper of general circulation:

"JURY OUT IN TRIAL FOR ZONING BRIBERY

"NORFOLK — A U.S. District Court jury here began deliberations about 11 a.m. today in the trial of a Washington area developer charged with bribing a former Prince Georges County, Md., commissioner for favorable consideration of a zoning application.

"Ralph D. Rocks, 54, president of the Rocks Engineering Co., was named in a federal indictment in December, 1969, charging him with bribing former Commissioner Jesse S. Baggett seven years ago with a $3,500 tractor.

"The trial opened here Jan. 2 with testimony from the government that Rocks' Washington, D.C.-based firm sent a check dated Dec. 23, 1964, to Maryland for $3,500 with intent to bribe Baggett, 62.

"U. S. District Court Judge Alexander Harvey II of Maryland has been hearing the case for the past three weeks here.

"The trial was transferred to the Norfolk district court after Rocks' attorneys, Ronald S. Liebman and Arnold M. Weiner, argued successfully that the 'flood' of publicity growing out of the Baggett trial in October, made the selection of an unbiased jury improbable.

"Baggett, also charged in a similar indictment, was convicted following his 15 days of trial in Maryland of

accepting a bribe. Sentencing in his case has been delayed pending the outcome of Rocks' case.

"Baggett could receive up to five years in prison and a $10,000 fine as punishment.

"The indictment naming both men was one of four which grew out of a three-year federal investigation into allegations of rezoning irregularities in the Maryland suburbs of Washington in the early and mid-1960's.

"Baggett was a commissioner during the years of Prince George's most rapid growth.

"Rocks' enterprises included developments in Montgomery County, Washington, Virginia and Florida.

"The developer was acquitted last year along with another man, Rogers H. Israel, former president of Loyola Federal Savings & Loan Association of Baltimore, with federal fraud and conspiracy involving $2.6 million in construction loan funds."

The next morning, January 26, 1972, the members of the jury reconvened, resuming their deliberations at about 9:30 A.M. At 10:20 A.M., the jury returned with a verdict of guilty on the one count indictment.

Defendant contends that one or more of the jurors read the newspaper article in question and that his constitutional right to be confronted with the witnesses against him was thereby infringed. In order to inquire into the facts alleged in the motion and in the affidavit submitted by defense counsel, an evidentiary hearing was held on February 23, 1972. The twelve jurors who rendered the verdict were subpoenaed and each of the jurors testified in open court under oath. Examination of the jurors was conducted by the Court itself. The Court had previously conferred with counsel concerning the scope of the inquiry, and counsel had been given an opportunity to submit in advance appropriate questions. Defense counsel had further requested the right to cross-examine each juror witness. This request was denied, but the

Court permitted counsel on both sides to suggest further questions after the Court's questioning was completed and many of these questions were in fact asked by the Court. After all twelve jurors had been examined by the Court, eight of them were recalled for further questioning suggested by the testimony that had then been received.

With limited exceptions, it is a settled rule that a juror's testimony is not receivable to impeach his own verdict. *Young v. United States*, 163 F.2d 187, 188 (10th Cir. 1947), *cert. den.* 332 U.S. 770, 68 S. Ct. 83, 92 L. Ed. 355 (1947); *Rakes v. United States*, 169 F.2d 739, 745 (4th Cir. 1948), *cert. den.* 335 U.S. 826, 69 S. Ct. 51, 93 L. Ed. 380 (1948); *United States v. Rees*, 193 F. Supp. 861 (D. Md. 1961). The inviolability of the jury room from outside influence of any sort is a prime necessity in the administration of justice. *Rakes v. United States, supra*, 169 F.2d at 745. As the Supreme Court said in *McDonald v. Pless*, 238 U.S. 264, 267, 35 S. Ct. 783, 784, 59 L. Ed. 1300 (1915), if there were not strict limits to inquiries into jury verdicts after they had been returned, then jurors "would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct sufficient to set aside a verdict." Wright & Miller, Federal Practice and Procedure, § 554, p. 493, 494.[3] Litigation must be terminated at some reasonable point and if jurors could, without limitations, be examined concerning their deliberations and their verdicts, the result would be to make what was intended to be a private deliberation into a constant subject of public investigation impeding frankness and freedom of discussion in the jury room. *Idem*, at 268, 35 S. Ct. at 784; Annotation, 58 A.L.R.2d 556, 559 (1958).

In *United States v. Crosby*, 294 F.2d 927, 950 (2d Cir. 1961), *cert. den. Mittleman v. United States*, 368 U.S. 984, 82 S. Ct. 599, 7 L. Ed. 2d 523 (1962), the Court listed the dangers inherent in a post-verdict inquiry into jury verdicts as follows (at 950):

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[3] See also American Bar Association Minimum Standards Relating to Trial by Jury, §5.7(c)(i).

> "There are many cogent reasons militating against post-verdict inquiry into jurors' motives for decision. The jurors themselves ought not be subjected to harassment; the courts ought not be burdened with large numbers of applications mostly without real merit; the chances and temptations for tampering ought not be increased; verdicts ought not be made so uncertain."

[2, 3] An exception to the general rule limiting post-verdict examination of jurors is recognized when it appears that matters not in evidence may have come to the attention of one or more jurors so as to violate the defendant's constitutional right to be confronted with the witnesses against him. *Parker v. Gladden*, 385 U.S. 363, 87 S. Ct. 468, 17 L. Ed. 2d 420 (1966). Thus, a juror may testify to facts bearing upon the question of the existence of any such extraneous influence, but not as to how far that influence operated upon his mind. *Mattox v. United States*, 146 U.S. 140, 13 S. Ct. 50, 36 L. Ed. 917 (1892); *Remmer v. United States*, 347 U.S. 227, 74 S. Ct. 450, 98 L. Ed. 654 (1954); *Holmes v. United States*, 284 F.2d 716 (4th Cir. 1960); *Downey v. Peyton*, 451 F.2d 236 (4th Cir. 1971); *United States v. Rees, supra.* A new trial is mandatory if it appears in a criminal case that individual jurors have read newspaper articles containing incompetent and prejudicial information. *Holmes v. United States, supra.* However, the manner in which a Court should determine whether a jury has been subjected to outside influence should be left to the discretion of the trial judge. *Marshall v. United States*, 360 U.S. 310, 79 S. Ct. 1171, 3 L. Ed. 2d 1250 (1959). As the Supreme Court said in that case (at page 312, 79 S. Ct. at page 1173):

> "The trial judge has a large discretion in ruling on the issue of prejudice resulting from the reading by jurors of news articles concerning the trial. *Holt v. United States*, 218 U.S. 245, 251, [31 S. Ct. 2, 6, 54 L. Ed. 1021]. Generalizations beyond that statement are not profitable because each case must turn on its special facts."

Pursuant to the authorities cited hereinabove, this Court ordered that a post-trial evidentiary hearing be held. How-

ever, the inquiry was strictly limited to the alleged outside influence, namely, whether the newspaper article in question or the statements made therein had come to the attention of any member of the jury between 5:00 P.M. on January 25 and 10:20 A.M. on January 26 when the verdict was returned. To prevent impermissible questioning of the jurors beyond this limited scope of the hearing, the Court itself examined each juror.

After consideration of the testimony at the hearing, this Court finds that, before the verdict was rendered, none of the jurors read the contents of the article that appeared in the *Ledger Star* on January 25, 1972. This Court further finds that the matters referred to in such article were not discussed in the jury room on the morning of January 26, nor did they otherwise then come to the attention of the jury. Only one juror noticed the article in the newspaper that evening. Juror Bowers testified that he read the headline of the article, but because of the Court's instructions, did not read the article itself.[4] Juror Early testified that he heard some one in the jury room ask if anyone had seen anything in the newspapers. He did not remember who made this inquiry, but he did recall that the response was "No, they hadn't saw anything." Juror Neese testified that on the morning of January 26 she heard one or more other jurors mention in the jury room the fact that an article had appeared in the paper. She did not remember who was involved. She did not hear any discussion of the facts mentioned in the article, and she characterized what she heard as "muddled conversation."[5]

[4] Except for the testimony of Jurors Bowers, Early and Neese as mentioned hereinabove, each of the 12 members

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[4] Juror Bowers remembered the headline as saying that "the Rocks case was presented to the jury." He apparently received an earlier edition of the newspaper than that put in evidence. After reading the headline, he passed the newspaper to his wife and read the article itself after the case was over.

[5] It is likely that what Juror Neese heard was the inquiry that Juror Early heard, namely, whether any one had seen anything in the newspapers. No other juror remembered hearing any comment in the form that Juror Neese believed she heard it.

of the jury in turn testified under oath that he or she did not see the article in question, that no one else either in the jury room or outside brought the article or the matters therein to his or her attention, and that he or she did not hear any of the other jurors discussing on the last morning of the trial the article or any of the facts mentioned therein.[6] Considering the testimony in its entirety, this Court concludes that the matters set forth in the newspaper article in question did not before the verdict was rendered come to the attention of one or more jurors in such a way as to deny defendant's constitutional right to be confronted with the witnesses against him.[7] See *United States v. Gibas*, 300 F.2d 836, 840 (7th Cir. 1962), *cert. den.* 371 U.S. 817, 83 S. Ct. 32, 9 L. Ed. 2d 58 (1962).

[5] In support of his motion, defendant advances two principal arguments. First, defendant claims that he was denied his right of cross-examination when the Court undertook to question the jurors itself. But, when a post-verdict evidentiary hearing is held, a convicted defendant does not have an unlimited right to cross-examine juror witnesses. *Miller v. United States*, 403 F.2d 77, 81-84 (2d Cir. 1968). As Judge Friendly said, speaking for the Court in that case, at page 82:

> "Especially because the line between proper and improper inquiry is not easy to draw, * * * and because the jurors may be in doubt about the proprieties, the judge may well find it better that he control any questioning, whether by having it done in open court, as the Supreme Court directed in *Remmer v. United States*, 347 U.S. 227, 74 S. Ct. 450, 98 L. Ed. 654 (1954), by allowing deposi-

[6] Each juror witness was given the newspaper article to read while on the stand and was asked specifically whether he or she had heard any discussion in the jury room that final morning of the facts mentioned therein. All 12 jurors testified that they heard no such discussion.

[7] The disparity between the actual facts and the allegations of the motion which impelled this Court to order a post-trial hearing suggests the desirability of a rule such as that mentioned in *Miller v. United States, infra*, at 82, which would prohibit questioning of a juror by an attorney after a verdict except by leave of court.

tions where the prosecutor would have an opportunity to object to improper questions, or *by passing in advance on the questions sought to be propounded.*" (Emphasis added).

[6] With reference to the post-verdict hearing held in this case, this Court did in fact pass in advance on the questions sought to be propounded to the juror witnesses and then interrogated the jurors itself. Counsel were permitted to suggest additional questions after the Court had completed its questioning of each juror witness.[8] A number of the jurors were recalled to the stand so that additional matters might be inquired into by the Court. In this manner, the questioning of the juror witnesses was confined to the issue of the existence of the alleged extraneous influence and was not permitted to include any inquiry into the jurors' actual deliberations nor the reasons for their verdict. That defense counsel wished to inquire into impermissible subjects in questioning the juror witnesses quite clearly appears from the questions that he submitted in advance of the hearing. Defendant's attorney requested the Court to ask the jurors whether the fact that Baggett had been convicted in Baltimore had ever been discussed by any of the jurors during the jury deliberations. The Court refused to ask this question as well as several others which sought to inquire into the substance of deliberations occurring before the morning of January 26, 1972.

United States v. Guthrie, 387 F.2d 569 (4th Cir. 1967), is not to the contrary. There the question as to private communications between a government witness and a juror was raised for the first time during the pendency of the appeal. The issue had therefore been presented to the Fourth Circuit by means of the submission of ex parte affidavits. The Court, noting that the fact that an alleged conversation had taken place was not disputed, remanded the case so that the defendants might have a hearing and an opportunity to

[8] Numerous bench conferences were held while juror witnesses were on the stand, and counsel's suggested additional questions were made a part of the record.

cross-examine. In *Guthrie*, the Court was not presented with any questions as to the extent that a juror might be interrogated by defense counsel after such juror had denied under oath the existence of any extraneous influence. At the post-verdict hearing in this case, defense counsel was not permitted to challenge or contradict testimony under oath by individual jurors that they had not read the newspaper article in question. To have permitted such challenge would have resulted in the type of harassment and "searching hostile inquiry" condemned in *Rakes v. United States*, *supra*, 169 F.2d at 745.

Secondly, defendant argues that the testimony adduced at the post-verdict hearing indicates that several jurors did in fact read and discuss the contents of the newspaper article in question. Defendant claims that it was the newspaper article which caused the jury to reach agreement so quickly on January 26. In the late afternoon of January 25, before the jury was sent home for the evening, the jury stood 9 to 3 for conviction. The next morning after some 30 to 40 minutes of further deliberation, another vote was taken and all 12 jurors voted for conviction. Defendant contends that the facts set forth in the newspaper article came to the attention of the 3 holdouts between 5 o'clock P.M. and the time that the final vote was taken the next morning and that such facts caused the minority to change their votes. Such contention amounts to no more than conjecture on the part of defense counsel. Like the other 9 jurors, the 3 holdouts all testified that they had not read the newspaper article and that none of the facts set forth in the article came to their attention either outside of the court room or during their deliberations on the final morning of the trial.

Defendant relies particularly on the testimony of Juror Neese and on the testimony of four other jurors who met and discussed the case in a restaurant across the street from the courthouse after the verdict had been returned and the jury discharged. Juror Neese, after testifying that she heard one or more of the jurors mention the fact that an article had appeared in the paper, said that she "would suppose" that the three holdouts were discussing the article when she saw

them talking to each other in the jury room on the final morning of the trial. When pressed by the Court, she admitted that she was some distance away, that she was not paying too much attention and that she actually could not hear what these three were talking about although she could say for sure that they were talking together. When considered in its entirety, the testimony of Juror Neese does not support defendant's claim that the facts set forth in the newspaper article came to the attention of and were considered by the three holdout jurors. Nor does any of the other testimony. Whatever may have caused these three to change their minds on the last morning of the trial, the evidence does not show that it was the newspaper article in question.

After the jury was discharged, seven of the twelve jurors went across the street to the Dutch Kitchen Restaurant for coffee.[9] Four of the seven remembered hearing something said at the restaurant concerning a newspaper article relating to the case. Apparently, no one of the jurors was paying much attention to the conversation in question because none of the four could remember who mentioned the newspaper article at that time and each gave a different version of what was said.[10] Juror Levine testified that she did not know "who said what" because she was giggling and laughing and fooling around with the waitress. Juror Bowers described the talk at the Dutch Kitchen as "a bunch of foolishness." After considering the testimony of the four who heard something mentioned about the article and comparing the testimony of each with the others, this Court accepts the version given by Juror Stearns.[11] She testified that she heard someone say "I wonder if they read it in the

[9] The 3 holdout jurors were not in this group.

[10] There were others in the restaurant at the time the seven jurors met for coffee, including waitresses and other customers who joined in the banter. It is not entirely clear from the testimony whether the reference to the newspaper article was made by a juror or by some one else then in the Dutch Kitchen.

[11] Jurors Stearns, Miller (the foreman), Levine and Bowers were the ones who remembered that something was said at the Dutch Kitchen about a newspaper article. The other three jurors who were there that morning did not recall any such discussion.

paper." Apparently several of the jurors were speculating as to the reason why the three holdouts changed their minds and voted for a conviction on the last morning of the deliberations. Juror Bowers knew that an article on the trial had appeared in the paper the night before. He could not remember at the time that he testified whether he had mentioned this to the others in the restaurant or not. It would appear that he probably did and that several jurors then engaged in speculation that the three holdouts had seen the article and had been influenced in some way by the newspaper article. Or general discussion may have begun when some one of those present remembered hearing what Juror Early heard, namely, one juror asking another whether he had seen anything in the newspapers.

Considered in its entirety, the testimony discloses that the discussion at the Dutch Kitchen after the jury had been discharged amounted to no more than pure conjecture by certain jurors as to the mental processes of other jurors. As this Court has found, the evidence establishes that the three jurors in question had not seen the article nor had the facts in the article been brought to their attention. Defendant would convert idle gossip and banter occurring after the conclusion of a long case into a finding that the jury was influenced by extraneous matters. A comparison of what actually transpired at the restaurant after the verdict had been returned with defendant's interpretation thereof emphasizes the soundness of the rule that a juror's testimony should not be receivable to impeach his verdict except as to very limited subjects and then only if carefully supervised by the Court.

For the reasons stated, defendant is not entitled to a new trial on the ground that his Sixth Amendment rights were infringed because of any extraneous influence on the jury. No Order will be entered at this time, pending a further hearing in connection with the other grounds advanced by defendant in support of his motion for a new trial.

APPENDIX C

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. 1952:

Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises.

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

Article 27, Section 23, of the Annotated Code of Maryland:

If any persons shall bribe or attempt to bribe any executive officer of the State of Maryland, any judge, justice of the peace or other judicial officer of this State, any member or officer of the General Assembly of Maryland, any officer or employee of the State, or of any county,

municipality or other political subdivision of the State, including members of the police force of Baltimore City and the State Police or any member or officer of any municipal corporation of this State, or any executive officer of such corporation, in order to influence any such officer or person in the performance of any of his official duties; and if the Governor or other executive officer of this State, any judge, justice of the peace or other judicial officer of this State, any member of the General Assembly of Maryland or officer thereof, any officer or any employee of the State, or of any county, municipality or other political subdivision of the State, including members of the police force of Baltimore City and the State Police or any member or officer of any municipal corporation, or mayor or other executive officer thereof in this State shall demand or receive any bribe, fee, reward or testimonial for the purpose of influencing him in the performance of his official duties, or for neglecting or failing to perform the same, every such person so bribing or attempting to bribe any of such officers or persons, and every such person so demanding or receiving any bribe, fee, reward, or testimonial shall be deemed guilty of bribery, and on being convicted thereof shall be fined not less than one hundred dollars or more than five thousand dollars, or, in the discretion of the court, shall be sentenced to be imprisoned in the penitentiary of this State for not less than two nor more than twelve years, or both fined and imprisoned, and shall also be forever disfranchised and disfranchised and disqualified from holding any office or trust or profit in this State; and any person so bribing or attempting to bribe or so demanding or receiving a bribe shall be a competent witness, and compellable to testify against any person or persons who may have committed any of the aforesaid offenses; provided, that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any such crime of which such person so testifying may have been guilty or a participant therein, and about which he was so compelled to testify.

Fifth Amendment to the Constitution of the United States:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment to the Constitution of the United States:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Chapter 427 of the Laws of Maryland of 1972:

> AN ACT to add new Sections 159 to 170, inclusive, to Article 26 of the Annotated Code of Maryland (1966 Replacement Volume and 1971 Supplement), title "Courts," to follow immediately after Section 158 thereof and to be under the new subtitle "Uniform Certification of Questions of Law Act," authorizing the Court of Appeals of Maryland to answer questions of law certified to it by certain Federal Courts, providing generally for the procedure for the handling and determination of these certifications, establishing also a procedure whereby the Court of Appeals or the Court of Special Appeals may seek a certification of a question of law from the highest court of another State and relating generally to the certification of law to and from certain courts of this State.

Section 1. Be it enacted by the General Assembly of Maryland, That new Sections 159 to 170, inclusive, be and they are hereby added to Article 26 of the Annotated Code of Maryland (1966 Replacement Volume and 1971 Supplement), title "Courts," to follow immediately after Section 158 thereof, to be under the new subtitle "Uniform Certification of Questions of Law Act," and all to read as follows:

159.

The Court of Appeals may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, or a United States District Court when requested by the certifying court if there is involved in any proceeding before it a question of law of this State which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the Court of Appeals of this State.

160.

This subtitle may be invoked by an order of any of the courts referred to in Section 159 upon the court's own motion or upon the motion of any party to the cause.

161.

A certification order shall set forth

(1) the question of law to be answered; and

(2) a statement of all facts relevant to the question certified and showing fully the nature of the controversy in which the question arose.

162.

The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the Court of Appeals by the clerk of the certifying court under its official seal. The Court of

Appeals may require the original or copies of all or of any portion of the record before the certifying court to be filed with the certification order, if, in the opinion of the Court of Appeals, the record or portion thereof may be necessary in answering the question.

163.

Fees and costs shall be the same as in civil appeals docketed before the Court of Appeals and shall be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification.

164.

Proceedings in the Court of Appeals shall be those provided in Maryland Rules of Procedure.

165.

The written opinion of the Court of Appeals stating the law governing the question certified shall be sent by the clerk under the seal of the Court of Appeals to the certifying court and to the parties.

166.

The Court of Appeals or the Court of Special Appeals of this State, on its or their own motion or the motion of any party, may order certification of a question of law to the highest court of any state if it appears to the certifying court there is involved in any proceeding before the court question of law of the receiving state which may be determinative of the case then pending in the certifying court and it appears to the certifying court that there are no controlling precedents in the decisions of the highest court or intermediate appellate courts of the receiving state.

167.

The procedures for certification from this state to the receiving state shall be those provided in the laws of the receiving state.

168.

If any provision of this subtitle or the application thereof to any person, court, or circumstance is held invalid, the invalidity does not affect other provisions or applications of the subtitle which can be given effect without the invalid provision or application, and to this end the provisions of this subtitle are severable.

169.

This subtitle shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

170.

This subtitle may be cited as the Uniform Certification of Questions of Law Act.

Sec. 2. And be it further enacted, That this Act shall take effect July 1, 1972.